

CITY OF TIGARD

ORDINANCE NO. 94.10

AN ORDINANCE OF THE CITY OF TIGARD REPEALING TIGARD MUNICIPAL CODE CHAPTER 13.08, STREET, SEWER AND WATER IMPROVEMENTS; ADDING CHAPTER 13.09, REIMBURSEMENT DISTRICTS, WHICH PROVIDES A NEW PROCESS FOR FORMATION OF A REIMBURSEMENT DISTRICT; AND CLASSIFYING THE FEES IMPOSED BY CHAPTER 13.09 AS NOT SUBJECT TO ARTICLE XI, SECTION 11B OF THE OREGON CONSTITUTION.

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WHEREAS, a person may construct street, water and sewer improvements which benefit adjacent property owners and relieve those adjacent property owners of installing such improvements; and

WHEREAS, in 1990, the City Council adopted a process (TMC Chapter 13.08) to impose a connection charge on adjacent property owners who are benefited by such street, water and sewer improvements; and

WHEREAS, the City Engineer has recommended numerous changes to the process in Chapter 13.08 and the City Council finds that the suggested changes will be beneficial; now, therefore:

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Ordinance No. 90-23, codified as Tigard Municipal Code Chapter 13.08, is repealed.

SECTION 2: The Tigard Municipal Code is amended by adding Chapter 13.09, Reimbursement Districts, attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 3: The City Council finds that the fees imposed by Chapter 13.09 of the Tigard Municipal Code are not taxes subject to the property tax limitations of Article XI, section 11(b) of the Oregon Constitution.

PASSED:

By Unanimous vote of all Council members  
present after being read by number and title only,  
this 10th day of May, 1994.

Catherine Wheatley  
Catherine Wheatley, City Recorder

APPROVED: This 10th day of May, 1994.

Jack Elwood  
Mayor

Approved as to form:

Jack Elwood  
City Attorney

10 May 94  
Date

Chapter 13.09

REIMBURSEMENT DISTRICTS

13.09.010 Definitions

(1) "City Engineer" or "Engineer" means the person holding the position of City Engineer or any officer or employee designated by that person to perform duties stated within this chapter.

(2) "City" means the City of Tigard.

(3) "Person" means a natural person, the person's heirs, executors, administrators, or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent employee or any representative thereof.

(4) "Applicant" means a person, as defined in subsection (3), who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the City for reimbursement for the expense of the improvement. The "applicant" may be the City.

(5) "Street Improvement" means a street or street improvement conforming with standards in the Tigard Community Development Code and including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public right-of-way.

(6) "Water Improvement" means a water or water line improvement conforming with standards in the Tigard Community Development Code and including but not limited to extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.

(7) "Sewer Improvement" means a sewer or sewer line improvement conforming with standards in the Tigard Community Development Code and including but not limited to extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line.

(8) "Reimbursement District" means the area which is determined by the City Council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

(9) "Reimbursement Fee" means the fee required to be paid by a resolution of the City Council and the reimbursement agreement. The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water or sewer improvement within the reimbursement district.

#### 13.09.020 Application for a Reimbursement District

(1) Any person who is required to or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the City Engineer, request that the City establish a reimbursement district. The street, water and sewer improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval or must be available to provide service to property other than property owned by the applicant. Examples include but shall not be limited to full street improvements instead of half street improvements, off site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The City may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this Chapter.

(2) The application shall include the following:

(a) A description of the location, type, size and cost of the public improvement to be eligible for reimbursement.

(b) A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

(c) Post-construction: The actual cost of the improvements as evidenced by receipts, invoices or other similar documents. Pre-construction: The estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the City Engineer.

(d) Post-construction: The date the City accepted the public improvements. Pre-construction: The estimated date of completion of the public improvements.

(3) Application for formation of a reimbursement district may be made at any time but shall be made no later than three months after completion and acceptance of the street, water or sewer improvements. However, the City Engineer may waive this requirement upon the showing by the applicant of good cause for the delay, that the delay was not created by the applicant, and that the delay was unavoidable due to unanticipated or unforeseen circumstances.

#### 13.09.030 City Engineer's Report

The City Engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The Engineer may request the submittal of other relevant information from the applicant in order to assist in the evaluation. The Engineer shall prepare a written report for the City Council, considering and making recommendations concerning the following factors:

(a) whether the applicant will finance or has financed some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;

(b) the area to be included in the reimbursement district;

(c) the actual or estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

(d) a methodology for spreading the cost among the parcels within the reimbursement district and where appropriate defining a "unit" for applying the reimbursement fee to property which may, with City approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the City Engineer. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);

(e) the reimbursement fee shall be adjusted annually beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the City. The annual fee adjustment shall be fixed and determined by the Council and computed against the reimbursement fee as simple interest and will not compound. The City Engineer may take into account the documented cost of any financing, including prepayment points, prepayment penalties, loan fees, and the actual percentage rate of interest being paid by the applicant, when recommending the annual fee adjustment to the City Council;

(f) the amount to be charged by the City for administration of the agreement by the City. The administration fee shall be fixed by the Council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the City at the time the agreement in Section 13.09.070(2) is signed.

(g) the period of time that the right to reimbursement exists if the period is less than fifteen years.

13.09.040 Amount to be Reimbursed

(1) The cost to be reimbursed to the applicant shall be limited to the cost of construction, including the acquisition and condemnation costs of acquiring additional right-of-way, the cost of permits, engineering and legal expenses, and the annual fee adjustment fixed and determined by the Council.

(2) A reimbursement fee shall be computed by the City for all properties which have the opportunity to utilize the improvements, including the property of the applicant for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant.

13.09.050 Public Hearing

(1) Within a reasonable time after the City Engineer has completed the report required in Section 13.09.030, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The City Council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

(2) If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the City. At that time, the City Council may modify the resolution to reflect the actual cost of the improvement(s).

#### 13.09.060 Notice of Public Hearing

Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this Chapter, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the City Council's action to approve the same.

#### 13.09.070 City Council Action

(1) After the public hearing held pursuant to Section 13.09.050(1), the City Council shall approve, reject or modify the recommendations contained in the City Engineer's report. The City Council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the City Engineer's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving City permits applicable to development of that parcel as provided for in Section 13.09.110.

(2) When the applicant is other than the City, the resolution shall instruct the City Administrator to enter into an agreement with the applicant pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the City. The agreement, at a minimum, shall contain the following provisions:

(a) The public improvement(s) shall meet all applicable City standards.



(b) The total amount of potential reimbursement to the applicant.

(c) The annual fee adjustment set by the City Council.

(d) The applicant shall guarantee the public improvement(s) for a period of 12 months after the date of installation.

(e) The applicant shall defend, indemnify and hold harmless the City from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the City's establishment of the district.

(f) The applicant shall acknowledge that the City is not obligated to collect the reimbursement fee from affected property owners.

(g) Other provisions as the City Council determines necessary and proper to carry out the provisions of this Chapter.

(3) If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

#### 13.09.080 Notice of Adoption of Resolution

The City shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee.

#### 13.09.090 Recording the Resolution

The City Recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of the County Recorder so as to provide notice to potential purchasers of property within the district. Said recording shall not create a lien. Failure to make such a recording shall not affect the legality of the resolution or the obligation to pay the

reimbursement fee.

13.09.100 Contesting the Reimbursement District

No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after 60 days following adoption of a resolution establishing a reimbursement district.

13.09.110 Obligation to Pay Reimbursement Fee

(1) The applicant for a permit related to property within any reimbursement district shall pay to the City, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, together with the annual fee adjustment, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the City for any of the following activities:

- (a) A building permit for a new building;
- (b) Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building, which exceed twenty-five percent (25%) of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;
- (c) Any alteration, modification or change in the use of real property, which increases the number of parking spaces required under the Tigard Community Development Code in effect at the time of permit application;
- (d) Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;
- (e) Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement;

(f) Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.

(2) The City's determination of who shall pay the reimbursement fee is final. Neither the City nor any officer or employee of the City shall be liable for payment of any reimbursement fee, annual fee adjustment, or portion thereof as a result of this determination.

(3) A permit applicant whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this ordinance is intended to modify or limit the authority of the City to provide or require access management.

(4) No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection 13.09.110(1) unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. Where approval is given as specified in subsection 13.09.110(1), but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

(5) The date when the right of reimbursement ends shall not extend beyond fifteen years from the district formation date.

#### 13.09.120 Administration

(1) The right of reimbursement is assignable and transferable after written notice is delivered to the City, advising the City to whom future payments are to be made.

(2) The City shall establish separate accounts for each reimbursement district. Upon receipt of a reimbursement fee, the City shall cause a record to be made of that property's payment and remit the fee to the person who requested establishment of the reimbursement district or their assignee.

(3) The reimbursement fee is not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the City.

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